

DEC 11 2007

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

JOHN F. CONNORAN, CLERK
BY:  DEPUTY CLERK

LERROY LOVELACE,)	
Plaintiff,)	Civil Action No. 7:03-cv-00395
)	
v.)	<u>ORDER</u>
)	
KEVIN LESTER, ¹)	By: Hon. Michael F. Urbanski
Defendant.)	United States Magistrate Judge

The court conducted a pretrial video conference this day on matters relating to the jury trial scheduled in this case for January 23, 2008. Counsel for Defendant Lester, Senior Assistant Attorney General Mark Davis, and Plaintiff Leroy Lovelace appeared by video. In accordance with the court's rulings on the record during that hearing, it is hereby **ORDERED** as follows:

1. Plaintiff's Motion to Compel (Dkt. No. 97) is **GRANTED in part** and **DENIED in part**.
 - a. The Motion is **GRANTED** as to Interrogatory #3, and on or before January 11, 2008, Defendant Lester shall provide a supplemental response indicating when Inmate Atkinson informed Defendant Lester of his misidentification of Lovelace on November 11, 2002;
 - b. The Motion is **GRANTED** as to Interrogatory #8, and on or before January 11, 2008, Defendant Lester shall provide a supplemental response providing the full name of any wardens, assistant wardens, and grievance coordinators to whom he reported the

¹With the consent of the parties and as all claims as to other defendants have been dismissed, the clerk **SHALL** change the style of this case to reflect the full name of the one remaining defendant, Kevin Lester.

incident on November 11, 2002; he shall also provide the substance of these communications and any document reflecting such communications;

- c. The Motion is **DENIED** as to Interrogatory #13, 21, and 25;²
 - d. The Motion is **DENIED** as to the Request for Production, as Defendant has provided Plaintiff Lovelace with the requested incident report;
- 2. Plaintiff Lovelace's Motion for Leave to File a Second Set of Interrogatories (Dkt. No. 109) is **GRANTED**;
 - 3. Plaintiff Lovelace's Motion for the Court to Declare the Court's Statutory Discretionary Authority to Pay Witness Fees and Expenses (Dkt. No. 91) is **DENIED**;
 - 4. Defendant Lester **SHALL** provide, in camera, the full names and/or last known addresses for the following individuals within ten (10) days of entry of this order: Jack Lee, Gene Shinault, Major Newberry, the grievance coordinator and any other officers to whom Defendant Lester reported the incident of November 11, 2002.³ As to those witnesses requested by Plaintiff Lovelace who are still employed by the VDOC, the court requests, but will not order, Defendant Lester to make reasonable effort to make these individuals available to testify at the January 23, 2008 jury trial, if feasible, in person or by video;

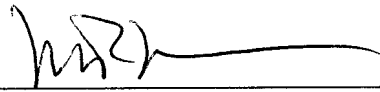
²The court found Defendant Lester's responses to Interrogatory #13 to be sufficient. Defendant Lester provided a supplemental response to Interrogatories 21 and 25, and Plaintiff Lovelace did not raise these questions during the pretrial hearing.

³According to standard court practice, once the court receives the names and addresses of these non-inmate witnesses that Plaintiff Lovelace has requested, the clerk's office will prepare and serve subpoenas on these individuals. Unless Plaintiff pays the witness fees, however, the subpoenas will be unenforceable as to these non-inmate witnesses.

5. Defendant Lester **SHALL** provide to the court, within ten (10) days from the entry of this order, the full names, inmate numbers, and current locations or last known addresses of Inmates Ali Miles and Jerome Atkinson;⁴
6. Plaintiff Lovelace's oral Motion regarding his attire for trial is **GRANTED** such that he shall not be required to wear an orange jumpsuit in the courtroom and the security stun belt shall be worn under his clothes;
7. In pursuit of settlement, Plaintiff Lovelace **SHALL** prepare and send a settlement demand letter to defense counsel within five (5) days, and counsel **SHALL** respond to this demand letter within five (5) days of receipt. Should the parties be unable to reach settlement through this correspondence, the case may be referred to the undersigned for mediation; and
8. Twenty days before trial (on or before January 3, 2008), the parties **SHALL** submit any motions in limine, proposed voir dire, copies of exhibits, and witness lists.

The Clerk is directed to send copies of this order to plaintiff and to counsel of record for the defendant.

ENTER: This 11th day of December, 2007.



United States Magistrate Judge

⁴According to standard court practice, once the court receives this information, the court will issue transportation orders requesting the Virginia Department of Corrections (VDOC) to bring Inmates Miles and Atkinson to the trial.